IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

C.O.C.P. No. 184 of 2005.
Date of Decision: September 07, 2006.

Jaswant Singh

....**Petitioner**

through
Mr. Mahavir Sandhu, Advocate

Versus

Surinder Malik & Ors.

...**Respondents**
through
Mr. S.S.Dinarpur, Advocate and
Mr. R.D.Sharma, DAG, Haryana.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.(ORAL)

This contempt petition has been filed alleging that despite an order dated 28th July, 2004 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby the Station House Officer, Police Station, Radaur was "directed to serve two days' advance notice before arresting the petitioner, if any case was registered against him in Police Station Radaur", the petitioner was arrested by the respondents who are police officer/officials of District Yamuna Nagar and have remained posted in Police Station at Radaur.

Apprehending that some FIR was likely to be registered against him and as a result thereof he would be arrested, the petitioner filed a pre-

arrest bail application under Section 438 of the Code of Criminal Procedure before the learned Sessions Judge, Yamuna Nagar. Pursuant to notice, the police report dated 26th July, 2004 was received by the court of learned Additional Sessions Judge, Jagadhri, in which it was stated that no FIR was registered against the petitioner at that time, though he was challaned under Sections 107/151 Cr.P.C. However, after taking notice that the petitioner "apprehends harassment at the hands of the police for his false implication in some other cases", the directions, as noticed above, were issued by the learned Additional Sessions Judge vide his order dated 28th July, 2004.

On November 20, 2004, FIR No.187 was registered in Police Station, Radaur against the petitioner under Sections 307,326,324,323,148, 149,506,120-B IPC read with Section 27/54/59 of the Arms Act. Concededly, the petitioner was arrested in the aforementioned case on 22.11.2004 and was produced before the Ilaqa Magistrate on the next day.

The petitioner, thus, alleges that since the respondents were obligated to issue him two days' advance notice (as directed by the learned Additional Sessions Judge vide his order dated 28th July, 2004) before arresting him, they have acted in derogation of the court's directions..

In response to the show cause notice, the third respondent has filed his affidavit, which is also on behalf of respondents No. 1,2,4 and 5. In para no. 4 of the said affidavit, the details of the following criminal cases registered against the petitioner have been given:-

> "1. FIR No.85/2001, u/s 326,324,323,148,149,506 IPC Police Station Radaur.
>
> 2. FIR No. 77/2002, under Section 379 IPC, PS Radaur.
> 3. FIR No. 116/2004, u/s 427,447,506 IPC, PS Radaur.
> 4. FIR No.155/2004, u/s 420,406,468,471,506,120-B, IPC, Police Station Radaur.
> 5. FIR No.187 dated 20.11.2004, u/s 307,326,324,323,

148, 149,506,120-B IPC read with 27/54/59 of the Arms Act, Police Station Radaur.
6. FIR No.53/2005, u/s 307,326,324,506,148,149 IPC, Police Station Radaur".

It is further explained that the said respondent joined the Police Station, Radaur on 16th September, 2004 and the order dated 28th July, 2004 passed by the learned Additional Sessions Judge, Jagadhri was never brought to his knowledge.

To resolve as to whether the respondent-police officials who concededly arrested the petitioner on 22nd November, 2004, were aware of the order dated 26th July, 2004 passed by learned Additional Sessions Judge, Jagadhri or not, various self-speaking orders have also been passed by this Court and in pursuance thereof, records have also been produced and perused. Pertinently, there are conflicting affidavits filed by the police officials, especially, by ASI Man Singh and MHC Gurcharan Singh who in their respective affidavits want to suggest that respondents No. 2 and 3 did violate the order passed by the learned Additional Sessions Judge.

Having regard to the nature of these proceedings, it appears expedient to find out the import and object of the order dated 28th July, 2004 passed by the learned Additional Sessions Judge, Yamuna Nagar. The said order having been passed in a pre-arrest bail matter, its import is, therefore, referable to the powers conferred upon the Court under Section 438 Cr.P.C. In my view, the direction of two days' advance notice were in respect of registration of a criminal case which the petitioner was apprehending on the basis of some event which had taken place before 28th July, 2004. The said order, by no stretch of imagination can be construed and enlarged to mean that the petitioner, even if was committing a most heinous crime openly and brazenly, the police authorities, notwithstanding

their obligation to maintain law and order, would have been totally helpless to prevent him from committing such crime and could not take him into custody forthwith merely because at a given point of time, the Court had directed to issue two days' advance notice before arresting him.

Since the alleged offences which the petitioner is stated to have committed in November, 2004, could never be visualized by the Court at the time when it passed the order dated 28th July, 2004, it is difficult to hold that the arrest of the petitioner is in violation or derogation to the said order. Consequently, I do not find any merit in this petition which is accordingly dismissed.

Rule discharged.

September 07, 2006. **(SURYA KANT)**
dinesh **JUDGE**